



CHILDREN, SCHOOLS AND FAMILIES BILL

Memorandum for the House of Lords Committee on Delegated Powers and Regulatory Reform from the Department for Children, Schools and Families

Introduction

1. This Memorandum sets out the provisions in the Children, Schools and Families Bill which confer powers on the Secretary of State to make delegated legislation. Annex A contains a summary of the clauses where it is proposed that powers to make secondary legislation are taken. The section 'Provisions for Delegated Legislation' explains in each case the purpose of the power; the reason why delegated legislation is appropriate; and the nature and reason for the Parliamentary procedure that apply.
2. The Bill seeks to reform the schools and wider children's service system following the recent White Paper "*Your child your schools your future: building a 21st century schools system*" and other reviews and publications. A full list of these is available at the end of this memorandum. It also introduces a licensing regime for teachers, for registration of home educated pupils and reforms to the family courts.

Background

3. This Bill will provide guarantees for parents and pupils setting out what they can expect from a 21st century schools system. These will equip every child, every family and everyone who works with them to meet the challenges ahead, and so help secure this country's success now and in the future.
4. It covers six main themes:

Guarantees – through new pupil and parent guarantees the Government is committing for the first time a series of specific entitlements for all, and providing a means of redress if expectations are not met.

21st century schools – building on over a decade of increasing school standards, this Bill will deliver the building blocks for a world class 21st century schooling system that meets the needs of every pupil so they can achieve their full potential.

Curriculum reforms – learning from wide ranging consultation and international evidence, the Bill will introduce reforms to the school curriculum so children and young people are equipped with the knowledge and skills they, and future employers, want and need.

Licence to practise – improving teaching underpins every effort to deliver the best possible education for all pupils, and through a new licensing system this Bill will professionalise the workforce and provide teachers with the status they deserve.

Safeguarding the vulnerable – strengthening the powers of local authorities and others with regards to registration, monitoring and intervention will mean effective systems are in place to protect those that most need it.

Increasing public confidence in family courts – opening up proceedings to increase transparency and introduce greater professional accountability while also protecting the welfare of children.

Territorial coverage

5. With one exception, the Bill extends to England and Wales only. One provision resulting from Part 2 extends also to Northern Ireland, but the amendment made is technical, and intended to maintain the current position in Northern Ireland.

Rationale and overview of delegated powers

6. In considering whether matters should be specified on the face of the Bill or left to delegated legislation, the Department has taken account of the inquiry undertaken by the House of Lords Select Committee on the Merits of Statutory Instruments, into the cumulative impact of SIs on schools and other public sector organisations¹. The Rt Hon Jim Knight, then Schools Minister, set out the Government's response to the Committee report in a letter of 7 May 2009 and this has been published as an appendix to that report².
7. We are mindful of the commitments that we made at that stage and will be planning on the basis of them. In particular, we are mindful of the need to reduce burdens on schools and other public bodies wherever possible. We are committed to ensuring that schools and other public bodies who may be

¹ HL Paper 45 (13 March 2009)

² HL Paper 100 (21 May 2009).

affected by secondary legislation are given as much notice as possible to prepare for any necessary changes; and common commencement dates for implementation of any secondary legislation resulting from the Bill will be considered wherever this is possible and makes practical sense.

8. Furthermore, the specific provisions for secondary legislation being sought in this Bill have been developed on the basis of the following considerations:
 - a) The overall legislative framework and the substantive policy provision must clearly be presented on the face of the Bill. The Bill, therefore, sets out the overall framework with secondary legislation used for subordinate provisions;
 - b) Within that overall framework, the provisions of the Bill must also support effective implementation and contain sufficient flexibility to respond to changing circumstances as the schools and children's service system evolves and matures;
 - c) The power to make regulations or orders must clearly be linked to the primary provision from which it stems. This results in quite a few regulation making powers but in so doing also provides greater clarity of intention than seeking more general secondary legislation making powers;
 - d) Operational, administrative and technical details are not normally set out in primary legislation. Too much detail on the face of the Bill risks obscuring the headline duties and powers from Parliamentary scrutiny. Use of secondary legislation not only ensures appropriate flexibility but also provides additional opportunities to consult with those that will be affected by the provisions.

Parliamentary scrutiny

9. All powers of the Secretary of State or Lord Chancellor to make orders or regulations under the Bill are exercisable by Statutory Instrument.
10. In the majority of cases, Statutory Instruments are to be subject to the negative resolution procedure. In the case of commencement orders under clause 49 no Parliamentary procedure is required, in line with standard practice. There is one exception to this, which is the commencement of the "Part 2 amending provisions" (contained in schedule 2 and defined in clause 40). Commencement of Schedule 2 requires the affirmative resolution procedure for reasons explained below. In one other case, that of making an order specifying assessment arrangements for Personal, Social, Health and Economic education (PSHE) (see schedule 4 paragraph 14(3)), there will also

be no scrutiny by Parliament. That is however, consistent with the current position for all other assessment arrangements for National Curriculum subjects (see s. 87(3)(c) and s. 210(5)(b) Education Act 2002 (“EA 2002”). There will also be no additional scrutiny of an order under clause 2(5)(b) but such an Order under that subsection can only follow an affirmative resolution of both Houses in any event.

11. In seven cases, the Department has determined that the affirmative resolution procedure is more appropriate. This is because the nature of the orders / regulations are significant and fundamental and either impose significant additional legal requirements or make changes to existing primary legislation such that it is also appropriate that Parliament scrutinises them further. These cases are:

- a) Issuing the Parent and Pupil Guarantee documents themselves;
- b) Orders to amend the areas of learning, or provisions regarding the teaching of languages, in the primary curriculum;
- c) Amendments to the ambit of pupil and parent guarantees to include other schools;
- d) To add or remove topics from PSHE;
- e) In the Family proceedings provisions, the powers to amend the definition of “professional witness” and to alter the list of sensitive personal information at schedule 3; and
- f) Commencement of the “Part 2 amending provisions” in schedule 2.
- g) The power to take certain types of proceedings out of, or bring them within, the reporting regime.

PROVISIONS FOR DELEGATED LEGISLATION

PART 1- CHILDREN AND SCHOOLS

Clause 1 - Pupil and parent guarantees

12. Clause 1 introduces the new Parent and Pupil Guarantees This provides for the Secretary of State to publish documents which will set out entitlements that parents and pupils can expect from their school and schooling experience. The guarantees will indicate whether these entitlements are mandatory, should ordinarily be provided or are a matter of good practice. To

the extent that the guarantees impose requirements on local authorities, governing bodies or head teachers, these new duties will be enforceable and the documents will be able to set the parameters of the duty by reference to the fulfilment of the 'ambitions' in subsections (4) and (5).

13. There will be a large number of detailed elements to the guarantees, some of which may change over time, and it is not therefore appropriate for all of these matters to be set out on the face of the legislation. The status of their various components will vary depending on whether they are mandatory or not and it is the Department's intention that the expectations of schools would increase over time.
14. Given the ability to impose significant additional requirements, the Department intends that the power to issue and revise the documents will be subject to the affirmative resolution procedure, detailed in clause 2 and merits this heightened scrutiny. The Secretary of State will also be under an obligation to consult on the contents of the document prior to laying before Parliament, so there will be ample opportunity for interested parties, or those affected by it, to give their own views on the proposals before they are laid before Parliament. A draft of the Guarantees was issued in January 2010 to allow the House to consider it alongside the Bill.
15. Subsection (9) of clause 1 permits the Secretary of State to make an order which alters the ambit of the parent and pupil guarantees by adding or removing a body or person upon whom requirements can be imposed by the guarantees (paragraph (a)) or by amending the types of school to which the guarantees themselves apply (paragraph (b)). Again, as an Order under this subsection would allow the ambit of the guarantees to be altered, it is right that this is subject to the heightened scrutiny of Parliament, through the use of the affirmative resolution procedure (subsection (10)).

Clause 2 - Procedure for issuing and revising pupil and parent guarantees

16. Clause 2 sets out the procedure by which the parent and pupil guarantees will be issued. Subsection (5)(b) of the clause provides that a guarantee (or the revisions of a guarantee) comes into force on whatever date the Secretary of State appoints by order. No parliamentary scrutiny of this order is specified. Given that no such order can be made by the Secretary of State until a draft of the document has already been approved by both Houses, any further Parliamentary scrutiny of the actual date would seem superfluous.

Clause 6 - Parental satisfaction surveys

17. Clause 6 inserts 7 new sections into Chapter 3 of Part 1 of the Education Act 1996 ("EA 1996").

18. Section 19J will introduce a new duty on local authorities to survey parents of each “prescribed description” about the provision of “relevant schools” in their area (subsection (1)). Subsection (6) specifies that descriptions of parents may be prescribed, for the purposes of this duty, by reference to the age of their child or by reference to children in a specified age group. “Relevant schools” for the purposes of this duty are those providing education of a prescribed description: so this power could, for instance, be used to prescribe secondary education and so require an authority to survey parents about the provision of secondary schools. Regulations under subsection (3) may make provision about arrangements to be made by an authority for the purpose of the new duty. In particular they may prescribe the particular matters on which parents’ views must be sought and the form in which these views must be obtained. Regulations under section 19J(7) may prescribe circumstances where a local authority will be exempt from the requirement to carry out a survey. Such circumstances might include where an authority has produced a response plan in the previous year that has been referred to, and then approved by, the Schools Adjudicator.
19. On the basis that the regulations made pursuant to these new powers will be used to set out matters mainly in relation to the **operational detail of the survey**, and that flexibility is needed in order to reflect any future changes in circumstances, these powers are considered to be appropriate for delegated legislation.
20. Section 19K requires a local authority to assess and publish a summary of the results of their parental satisfaction survey. If these results demonstrate “material parental dissatisfaction” with the provision of relevant schools in their area the authority will be under a duty to produce a response plan. We will prescribe in Regulations under section 19K(3) **how this material parental dissatisfaction is to be determined**. Section 19K(4) specifies that in preparing a response plan an authority shall consult parents of a prescribed description in their area. Regulations under subsection (6) may make provision about the consultation arrangements to be made by an authority in connection with this duty. This may include the arrangements an authority must make to ensure parents in the area of another authority are consulted, if the proposals in the plan are likely to be of interest to them (pursuant to the duty in subsection (5)). Regulations made under section 19K(6) will make provision about an authority’s assessment of the results of a parental satisfaction survey. Further, they will specify when and how a summary of those results should be published. The matters that should be dealt with in the response plan will also be included in Regulations; they could, for example, prescribe that where the results of the survey have shown the majority of parents favour a particular option, if an authority decides not intend to consult further on this, they must explain their rationale in the plan.

21. It is appropriate that this level of detail (which will need to be refined and agreed following consultation) is contained in Regulations, so as to give the requisite level of flexibility.
22. Section 19L(1) provides that where a local authority have prepared a response plan, they shall give “eligible parents” in their area the opportunity to make representations. Subsection (6) then provides that “eligible parents” will be prescribed for the purpose of this duty. Section 19L(3) gives a power for further regulations to prescribe the **trigger level at which the local authority will be required to refer a plan to the Schools Adjudicator**. It is appropriate that this level of detail, which may alter depending on the results of pilot surveys and changing circumstances, is contained in delegated legislation.
23. Regulations made under section 19L(4) will make provision about the arrangements to be made by an authority to enable parents to make representations to them about the plan. The Regulations will also specify the steps to be taken by an authority when a plan must be referred to the adjudicator. Such steps might include the timeframe within which a copy of the plan must be sent. On the basis that these are procedural and administrative details it is appropriate that they are dealt with in delegated legislation.
24. Section 19M provides that Regulations may make provision about the **procedures that must be followed by the adjudicator and the persons that must be consulted**, where a plan has been referred. They may specify the criteria that the adjudicator must take into account when making a determination about an improvement plan. New section 19N provides that regulations may prescribe the steps that must be taken by an authority where they have to modify or produce a revised response plan. These are procedural matters that would be too detailed for primary legislation.
25. All of the delegated powers sought here are to enable us to prescribe elements of administrative and technical detail so as to ensure that the overarching duty (on the face of the legislation) will operate in practice. It is for these reasons that the Department proposes the negative resolution procedure is appropriate.

Clause 9 - Exceptional provision of education in short stay schools or elsewhere

26. Clause 9 (4) amends the new current subsection (3B) of section 19 of the EA 1996 (exceptional provision of education in short stay schools or elsewhere).
27. The main effect of the new provisions is to require local authorities to ensure the provision of full-time education for all children falling within the scope of

section 19(1) and not only pupils excluded from maintained schools as is currently the case. This new duty to arrange full-time education is subject to the exception that it does not apply in the case of a child within subsection (3AA). That subsection refers to a child for whom a local authority considers that, for reasons which relate to their physical or mental health, it would not be in the child's best interests for full-time education to be provided. If full-time education is not appropriate, the local authority will be under a duty to arrange such part-time education as the authority considers to be in the child's best interests.

28. Clause 9 (4) amends the existing regulation making power in subsection (3B) to allow the Secretary of State to make regulations which provide the date from which the arrangements made by a local authority under section 19(1) are to take effect. The only difference between the existing and the proposed power is that the existing power is limited to arrangements for the provision of full-time education for excluded pupils made in pursuance of the existing subsection (3A), whereas the power in subsection (3B) as amended applies to arrangements generally made under section 19(1). This reflects the change made by new subsections (3A) and (3AA).
29. We consider that it is appropriate to use delegated legislation for this purpose to allow flexibility in prescribing the day from which a local authority has a duty to arrange education. It is proposed to make the regulation making power subject to the negative resolution procedure. The existing regulation making power under section (3B) is subject to the negative resolution procedure. Despite the power being extended, it is still primarily an administrative power to set a date from which education is to be provided. As there is presently no intention to change the date from which education is provided, this level of Parliamentary scrutiny continues to be appropriate.

Clause 10 - Areas of learning

30. **Clause 10** reforms the primary curriculum to introduce six new "areas of learning" within which teaching at primary level will be structured. The clause includes three Order making powers. Clause 10(2) inserts a new subsection (2A) into s. 87 EA 2002, to permit the Secretary of State to specify by Order, in relation to each area of **learning attainment targets, programmes of study and assessment arrangements**.
31. Subsection (2A) itself permits the Secretary of State to specify these for matters which range across more than one area of learning, and the inserted subsection (2B) also permits the Secretary of State to specify these for only a part of an area of learning (for example, for English only). Consistently, with what is presently contained in s. 87 in relation to key stages 1 and 2, and consistently with what will remain the position for key stages 3 and 4 the making of Orders under new subsection (2A) of section 87 which specify

attainment targets and programmes of study will be subject to the negative resolution procedure, and orders under subsection (2A) which specify assessment arrangements will not be subject to any parliamentary scrutiny (see Schedule 2 paragraph 14(3)). Clearly, Parliament will have an interest in the content of programmes of study and the standards set for these, but these will obviously be too detailed for primary legislation and will need to retain flexibility to change over time. Any proposal to make an order under the new section 87(2A) in relation to programmes of study or attainment targets would also have to be referred to the Qualification and Curriculum Development Agency (QCDA) for them to undertake a consultation under section 96 EA 2002 with bodies specified in section 96(3). Section 96 subsequently requires the Secretary of State to consult on a draft order prior to laying before Parliament.

32. Assessment arrangements are, on the whole, administrative, and therefore unlikely to be of interest to Parliament. Orders will also, consistently with the current provision for key stages 3 and 4, allow the content of the programmes or attainment targets to be specified in a document referred to by the Order (see section 87(5) of the EA 2002).
33. The Secretary of State will, however, have to consult the Office of the Qualifications and Examinations Regulator (Ofqual) and any other person considered appropriate by the Secretary of State (pursuant to s. 87(6A) EA 2002), before making any provision for assessment arrangements (which take effect by virtue of an Order by the Secretary of State under new subsection (2A)).
34. Subsection (6) of new section 83A (which is inserted by clause 10) permits the Secretary of State to **amend the areas of learning** and the powers relating to **designation of languages** for the purpose of the area of learning 'understanding English, Communication and Languages' by Order. Any such Order under subsection (6) will be subject to the affirmative resolution procedure (see Schedule 4 paragraph 14(2)(a), amending s. 210 EA 2002) which is appropriate given that it is a power to amend primary legislation by Order, and given that the areas of learning are fundamental to the primary curriculum.
35. In addition to requiring an affirmative resolution procedure, any proposal to make an order under the new section 83A(6) (to amend the areas of learning or the modern foreign languages which can be studied) must first be referred to QCDA under s. 96(2) EA 2002 and the QCDA must apply the consultation procedure set out in section 96. Section 96 also requires the Secretary of State to publish a draft order and consult on that prior to laying the final order before Parliament.

36. Subsection (4) of new section 83A permits the Secretary of State by order to **specify modern foreign languages** for the purposes of teaching within 'understanding English, Communication and Languages', or to specify all modern foreign languages. Such an order may also specify a mechanism for determining in any case whether a language is, in fact, a modern foreign language. Such orders are subject to the negative resolution procedure (by virtue of s. 210(4) EA 2002) which is appropriate given that there may need to be flexibility to change this over time, and there is no need to be over prescriptive in the legislation. This is consistent with the procedure for modern foreign languages at key stage 3 and 4.

Clauses 11 to 14 - Personal, Social Health and Economic education (PSHE)

37. Clauses 11 to 14 introduce Personal, Social, Health and Economic education as a new statutory National Curriculum subject in Key Stages 3 and 4, and provide for a duty to issue a programme of study for each stage and a power to specify assessment arrangements and attainment targets. These are extensions to existing powers from the EA 2002. The clauses also revise and re-enact provisions relating to sex education in the EA 1996.

38. The high-level **content of the curriculum** for PSHE is listed in a new s. 85B EA 2002 (which is inserted by clause 11(4)) - for example, 'personal finance', 'emotional health and well-being' etc. Subsection (2) of new section 85B permits the Secretary of State to amend this list by Order. This is subject to the affirmative resolution procedure because such changes amount, in practice, to an amendment of the curriculum. This is achieved through a minor amendment in schedule 4, paragraph 14(2)(b) adding the power at section 85B(2) to the list of orders requiring affirmative resolutions in section 210(3) of the EA 2002.

39. The amendments made by clause 11(1), (2) and (3) to the provisions of section 84(3) and 85(4) of the EA 2002 and section 74(1)(d) of the Education and Inspections Act 2006 ("EIA 2006") respectively, permit the Secretary of State to make Orders setting out **programmes of study**, attainment targets and assessment arrangements for PSHE, as is possible in relation to all other National Curriculum subjects. Accordingly, the same Parliamentary procedure will apply to them- as noted above, negative resolution procedure for programmes of study and attainment targets and no Parliamentary scrutiny for assessment arrangements. However, new section 85B(3) specifically dis-applies any obligation on the Secretary of State to make orders setting out attainment targets or assessment arrangements for PSHE. This is because the nature of the subject and its content is such that it is not considered appropriate to treat it like any other academic subject, and to recognise that many of its elements are not intended to be tested upon. The legislation

retains a flexibility for the Secretary of State to specify attainment targets and assessment arrangements by order if he so wishes, however, to maintain this possibility and to provide flexibility for the future. There is no intention to use these powers at present.

40. Clause 12 extends the ambit of the Secretary of State's order making powers in relation to PSHE as a subject by allowing it **to extend to Academies, City Technology Colleges or City Colleges for the Technology of the Arts (together 'Academies')** in key stages 3 and 4. It provides that attainment targets, programmes of study and assessment arrangements have effect in those schools as they have effect in maintained schools. Although clause 12 does not, itself, therefore include any delegated powers, as such, it does act to expand the scope of those powers delegated in clause 11 and it is described here on that basis.

Clause 15 - Power to provide community facilities, etc

41. Clause 15(3) removes the restriction in section 50(4) Schools, Standards and Framework Act 1998 ("SSFA 1998") that prevents governing bodies of maintained schools in England from using their delegated budgets for certain purposes, including the provision of community facilities and services under section 27 Education Act 2002. Clause 15 also inserts a new regulation making power in a new section 50(3A) of the SSFA 1998 to allow the Secretary of State to impose restrictions on the use by governing bodies of their delegated budgets.
42. Clause 15 will allow governing bodies **more freedom in the use of their delegated budgets** but the new regulation making power will allow the Secretary of State to impose specific restrictions if such restrictions are deemed to be required.
43. It is appropriate to use subordinate legislation to impose restrictions on the use by governing bodies of their delegated budgets because any restrictions that are deemed necessary may need to be altered over time in response to changing circumstances and sufficient flexibility will be required. The negative resolution procedure is considered appropriate for the same reasons.

Clause 19 - School improvement partners

44. Clause 19 inserts into section 5(1) of the EIA 2006 a new power to prescribe additional services that a School Improvement Partner ("SIP"), appointed by the Local Education Authority is to provide to the governing body and head teacher of a school.
45. This will allow the Secretary of State a new power to make regulations which prescribe **services that SIPs are appointed to provide to governing**

bodies and head teachers of school, in addition to advice. It is intended that the regulations will set out more detail about the role that SIPs are appointed to provide.

46. On the basis that any regulations made pursuant to the new power will be used to set out further details in relation to the role of the SIP and that flexibility is needed in order to reflect any future changes to the role, the power is considered to be appropriate for delegated legislation.
47. The negative resolution procedure is most appropriate, as the new power does not alter the fundamental duty on local authorities to appoint a SIP to provide services to assist schools, and it is consistent with the existing regulation making powers under sections 5(3), 5(4) and 5(5).

Clause 20 - Provision of information about schools, etc

48. Clause 20 covers the provision of information about schools and alternative provision. Section 537 of the EA 1996 currently gives the Secretary of State and the Welsh Ministers power to make regulations requiring the governing body or proprietor of a school to supply information about the school. Clause 20(1) expands this by providing that, for the purpose of this power, information about the views of prescribed persons about a school is to be taken to be information about the school. The clause also amends section 537 to provide that if regulations require information about the views of a “prescribed person” to be supplied, they may also make provision about how those views will be obtained. This will enable the **views of people such as parents and pupils** to be obtained in the same way in relation to all schools, such as by survey, to ensure that they can be used to compile a national dataset for use in performance measurement and to produce the School Report Card.
49. These powers are an extension of the existing powers to make regulations in s. 537 EA 1996, and those powers are exercised by the negative resolution procedure. Clause 20(1)(a) expands the Secretary of State’s ability to make regulations under s. 537(1) to amend subsection (2) of the EA 1996 to treat the views of prescribed people as information about the school; and introduces a new subsection (8A) into s. 537 which permits regulations to be made which govern also how governing bodies or proprietors of schools are to obtain information as to the views of prescribed persons.
50. Clause 20(2) and 20(3) introduces a new power for the Secretary of State and the Welsh Ministers to make regulations requiring the supply of information about **education funded by a local authority under section 19 of the EA 1996 (i.e. Alternative Provision)**. The regulations may impose a requirement to supply information on either the provider of the education, or a local authority. This power mirrors that for schools in s. 537 (as amended by

subsection (1) of clause 20). The negative resolution procedure is used to reflect the power in section 537.

Clause 21 – Schools eligible for intervention: powers of local authority

51. Clause 21 and paragraph 15 of Schedule 4 will allow the Secretary of State to make regulations under section 21 of the EIA 2006 which require a governing body which has published proposals for a school to acquire a foundation pursuant to a notice under new section 63(1)(e) EIA 2006 to refer the proposals to the adjudicator for determination.
52. Clause 21 provides a new power for local authorities to require a governing body of a maintained school that is eligible for intervention to take specified steps to acquire a particular type of foundation. The acquisition of this type of foundation is a 'prescribed alteration' under Part 2 of the EIA 2006 and the proposals are known as "foundation proposals". Section 22 EIA 2006 applies to foundation proposals and subsection (5) of that section states that if the governing body of the school does not determine the foundation proposals itself, only the local authority can require the proposals to be referred to the adjudicator for determination. Paragraph 15 of Schedule 4 provides that section 22(5) EIA 2006 does not apply to foundation proposals in these particular circumstances, which will allow the Secretary of State to make regulations under section 21(2)(g) EIA 2006 requiring the **governing body to refer the proposals to the adjudicator for determination**.
53. This is an extension of the regulation making power in section 21(2)(g) EIA 2006 Act. Since the power already exists in primary legislation to allow regulations to require that proposals for a 'prescribed alteration' (except for foundation proposals) are referred to the adjudicator by the Secretary of State, it is appropriate to extend that power by disapplying section 22(5) EIA 2006 Act so that foundation proposals are included in that power, rather than providing a completely new power. Regulations made under section 21 EIA 2006 are subject to the negative resolution procedure so it is appropriate for the extended regulation making power in section 21(2)(g) EIA 2006 to be subject to that procedure.
54. Clause 21 and paragraph 16 of Schedule 4 will allow the Secretary of State to make regulations which require a governing body which has published proposals for a school to remove a foundation pursuant to a notice under new section 63(1)(f) EIA 2006 to refer the proposals to the adjudicator for determination.
55. Clause 21 provides a new power for local authorities to **require a maintained school that is a foundation school** with a foundation that has either been established or has acquired its foundation under EIA 2006, and that is eligible for intervention, to publish proposals **to remove the foundation**. The removal

of a foundation is a 'prescribed alteration' under Part 2 of EIA 2006. Paragraph 16 of Schedule 4 inserts a new subsection in section 26(2) of the EIA 2006 to extend the regulation making power under section 26 to allow regulations to require that proposals published pursuant to section 63(1)(f) are referred to the adjudicator for determination.

56. This is an extension of the existing regulation making power in section 26 EIA 2006. Since the power already exists in primary legislation to make regulations about the publication and determination of proposals for the removal of a foundation, it is appropriate to extend the existing power rather than providing a completely new power. Regulations made under section 26 of the EIA 2006 are subject to the negative resolution procedure so it is appropriate that any extension to the regulation making power in section 26 is also subject to the negative procedure.

Clauses 23 to 25 - Licence to practise

57. Clauses 23 to 25 introduce the new Licence to Practise and these clauses include three regulation making powers. Clause 23 providing for a new s. 4B of the Teaching and Higher Education Act 1998 ("THEA 1998") includes a power for the Secretary of State to make regulations to authorise the General Teaching Council for England to **issue registered teachers with a licence**. The regulations will be required to make provision about the grant and refusal of a licence, the renewal of a licence and the withdrawal of a licence. The issue of a licence will be on the basis of periodical renewal and teachers continuing to demonstrate they meet certain professional standards. The licensing system will be new so this is clearly a new power.
58. Including these principles in primary legislation and the details in secondary legislation will allow for the system to mature and evolve following its launch and initial implementation. The regulations will follow the broad principles set out in the primary legislation and go into the technical detail needed to operate such a system. The Department proposes these regulations be subject to the negative resolution procedure on the basis that they are essentially about administration of a licensing system, not the principle of it. The regulations will cover, inter alia, the procedures that are to apply for granting, withdrawing, refusing and renewing licences including the evidence and information that applicants must provide. They will provide for different categories of licence for people in different circumstances, and for their duration. Regulations under new section 4B(3)(h) THEA 1998 will impose an obligation on employers to provide information regarding certain categories of teacher to the GTCe, for example to enable those who have had a break from teaching ("returners") to be identified. Regulations under new section 4(B) (7) may allow the GTCe to make provision in the same way as is possible regarding the current registration system.

59. The new s. 4C THEA 1998 introduced by clause 23 requires the Secretary of State to make regulations conferring on a registered teacher a right of appeal against a refusal to grant or renew a licence; the withdrawal of a licence; a decision to grant or renew a licence conditionally; or a decision as to the duration of a licence. This too is a new regulation making power but it builds upon other appeals processes (including the existing system for teachers appealing in relation to decisions on registration) and is more appropriately set out in regulations to allow it to be altered over time. Furthermore the Department considers this appropriate for the negative resolution procedure as these are essentially technical operational issues.
60. The final regulation making power in relation to the Licence to Practise is conferred by Clause 24. Clause 24 inserts a new section 134A into the EA 2002 which states that regulations may provide that specified work may be carried out in a school in England by a qualified teacher only if the teacher has a license to practise. This regulation making power will be used to ensure that all qualified teachers (including supply teachers and teachers from overseas) in maintained schools, non-maintained special schools, pupil referral units, academies, city technology colleges and city colleges for the technology of the arts will be required to hold a 'licence to practise' from a date or dates to be specified. This is also, of course, a new power and is modelled on existing powers in relation to Qualified Teacher Status (section 133 of the EA 2002) and registration of teachers (section 134 of the EA 2002). As before, the Department considers this administrative detail to implement the overall system to be appropriately taken forward through regulations subject to the negative resolution procedure.
61. Clause 25 extends the existing regulation making powers of the Secretary of State under sections 133 and 134 of the EA 2002 to cover Academies, city technology colleges and city colleges for the technology of the arts. As with the existing powers in section 133 and 134, the regulations are subject to the negative resolution procedure.

Clauses 26 and 27 - Home education

62. Clauses 26, 27 and schedule 1 cover home education. Clause 26 and schedule 1 will introduce a new **requirement for local authorities in England to keep a register** of all children of compulsory school age in their area who are home educated, and to monitor those children to ensure that they are receiving a suitable education and are safe and well.
63. Clause 26 inserts new sections 19A to 19I EA 1996. There are new regulation making powers under schedule 1 in sections 19A, 19B, 19C, 19F, 19G and 19H. These will allow for the procedural detail of the new registration scheme and how it will operate to be set out in regulations. Requirements of the scheme will be set out on the face of the Bill.

64. There is a power to make regulations under section 19A(2) about **how local authorities should maintain (and amend) their home education register.**
65. Section 19B(1)(a) gives a general power to make regulations about the manner in which **an application** for a child's details to be entered on a local authority's home education register is to be made. Section 19C (4) specifies that regulations made in the exercise of this power may make provision about how an application is to be made, and about information that is to be included in it, including a statement about the education that it is intended to provide to the child, and about the provision of an undertaking to provide required information. Subsection 19C(5) specifies that regulations made in the exercise of this power may allow an authority to provide for a period within which a repeat application may not be made in respect of a child whose previous registration has been revoked, or whose previous application for registration was not successful, unless there has been a change of circumstances.
66. The Regulations in relation to applications will contain detailed provisions not suitable for the face of the Bill. The Department is also concerned to have flexibility over time making these powers appropriate for delegated legislation.
67. Section 19C(1) gives a general power to make regulations about steps to be taken by a local authority in connection with an application for a **child's details to be entered on the register.** This may cover, for example, how a local authority may want to populate and maintain the register - on-line, in writing or in person; at the local authority's offices, at a school or at a library or other public building. Guidance will say that in doing so local authorities should take into account the views of home educators locally about how the process might work and operate on the principle that registration should be convenient for home educators. Section 19C(2) further provides that the regulations may make provision about matters that are and are not to be taken into account by an authority in deciding whether to register a child. Section 19B(2) gives a power to make regulations about what details in relation to a child should be entered on the home education register. Regulations will specify the information to be held on the register which may include, for example, the child's name and address, gender, date of birth, race, religion, details of disability or special educational needs, names and addresses of those with parental responsibility and details of where most education is taking place.
68. New section 19E obliges a local authority to make arrangements to monitor the provision of education to a home educated child.
69. Section 19F deals with revocation of registration. Subsection (5) provides a general power to make regulations about steps to be taken by an authority in

relation to revocation or proposed revocation. It is intended that these regulations will specify what **steps a local authority should take in connection with a proposed decision to revoke a home education registration**. We would expect local authorities to make comprehensive enquiries before revoking registration and to give home educating parents ample time to make representations if they believe the grounds for revocation are unreasonable. Section 19F(6) provides that the regulations may also specify matters which an authority are or are not to take into account when considering revocation. We envisage that local authorities will have flexibility around their discretion and their duties are clear on the face of the Bill. The regulations will assist them only by providing a procedural framework within which their decisions are made.

70. Section 19G(1) provides that regulations will provide for a right of appeal against an authority's decision to refuse or revoke registration. Subsection (2) gives an indication of the procedural provision that will be needed. The regulations will be accompanied by guidance with the aim of ensuring that appeals are informal and impartial along similar lines to school admissions appeals. At present, we envisage that the appeals panel will be independent from the local authority and will be comprised of three people: at least one person who has a professional educational background, at least one person who has experience of home educating and a lay member.
71. There is a general power at Section 19H(1) to make regulations requiring a local authority in England, or the proprietor of a school in England, from which a home educated child has been withdrawn, to supply information about the child, in certain circumstances, to a local authority. This is intended to cover the situation where a child has been withdrawn from school to be home educated. Regulations may provide for example that if a school knows the identity of the local authority with whom the child will be registered for home education then it must notify its own local authority of this and pass on certain information about the child to the new local authority.
72. All of the above powers will be subject to the negative resolution procedure under s. 569 EA 1996, which is appropriate as the registration scheme will be too detailed to be on the face of the legislation and will contain extensive administrative provision.
73. Clause 27 provides for a framework power for the National Assembly for Wales ("NAW") to enable it to make provision, within **an Assembly Measure**, about the regulation of home education and the inspection of services provided by local authorities to persons involved in the provision of home education. This new power is conferred by amending field 5 of Schedule 5 to the Government of Wales Act 2006. This will enable the NAW, within an Assembly Measure, to make provision about the inspection and regulation of home education.

74. The framework power will set the scope of the legislative competence of the NAW in order to pass a Measure. Following a period of consultation on its detailed proposals for a Measure on home education by the Welsh Ministers, the NAW will then be able to pass a Measure making provision about home education. Such a future Measure, as with all other Measures passed by the NAW, will be subject to the scrutiny and procedures of the NAW as laid down in its Standing Orders.

Clause 30 - Review by Chief Inspector of performance of Local Safeguarding Children Boards in England

75. Clause 30 confers power on the Secretary of State to make regulations providing for Her Majesty's Chief Inspector of Education, Children's Services and Skills ('the Chief Inspector') to undertake a **review of a LSCB's performance of specified functions**.

76. The regulation making power in clause 30 allows for regulations to specify which functions are to be reviewed by the Chief Inspector. It also allows for regulations to allow or require the Chief Inspector to carry out a review, or to require the Chief Inspector to carry out a review in specified circumstances. The regulations may also deal with the making of a report by the Chief Inspector once a review has been completed, and make provision about sharing information for the purposes of a review.

77. The Department wishes to retain some flexibility as to which specific functions are reviewed. Some LSCB functions may be more appropriately reviewed under other arrangements, for example, as part of Joint Area Reviews undertaken under section 20 of the Children Act 2004. The Department also considers that the detail as to when and how a review is required to be carried out is best set out in secondary legislation, given that this might vary depending on which functions are being reviewed. The Department considers it is appropriate for these procedural details to be taken forward through the negative procedure.

PART 2: FAMILY PROCEEDINGS

Clauses 32-41

78. Part 2 of the Bill includes powers to make secondary legislation on the reforms to **increase transparency of family proceedings** with the aim of improving public confidence. There are four powers in clauses 32, 39, 40 and 41. The first of these is a power to amend the definition of "relevant family proceedings", which are the proceedings subject to the new reporting regime. This power is intended to ensure that the regime continues to apply to the appropriate range of proceedings should the definition of "family proceedings"

more widely change. The second power at clause 39(1) is intended to ensure that rules of court will make any necessary provision for appeals in the event that they are not already provided for by wider existing rules on appeals, so that appropriate provision for appeals against decisions on reporting is made.

79. The third and fourth powers are found in clause 41(3). Clause 41(3)(a) permits amendments to the definition of “professional witness” (those categories of witness who may, by way of exception to the general rules against identifying persons involved in family proceedings, be identified in reports of such proceedings) also found in clause 41, if appropriate in the light of experience of operation of the new reporting regime. Clause 41(3)(b) permits amendment of the list of “sensitive personal information” at schedule 3 specifying certain categories of information publication of which is prohibited unless the court otherwise directs.
80. The first power is exercisable by statutory instrument subject to affirmative resolution procedure, and the second by statutory instrument subject to negative resolution. Both powers are intended to ensure technical amendments may be made to ensure the scheme operates effectively over time; but affirmative resolution procedure is adopted for the first because the power could be used in ways which could take certain types of proceedings out of, or bring them within, the reporting regime. For the third and fourth powers, it is considered appropriate to secure changes to the definition or list through secondary legislation on the basis that it may well be important to change them from time to time in light of other operational experience and/or to take account of other legislation. Changes would follow discussions with stakeholders including the judiciary. However, given that the nature of the changes would be central to how the primary legislation itself can be implemented, the Department proposes that orders under the third and fourth powers are subject to the affirmative resolution procedure.
81. The order making powers in clauses 32, 40 and 41 are conferred on the Lord Chancellor. The power to make rules of court in clause 39 is one conferred on the Family Proceedings Rules Committee (such rules being allowed by the Lord Chancellor and contained in a statutory instrument subject to the negative resolution procedure (for which see section 40A(5) of the Matrimonial and Family Proceedings Act 1984 and section 79(6) of the Courts Act 2003)).
82. There is no separate, specific power to commence the “Part 2 amending provisions” in Schedule 2 distinct from the normal commencement power at clause 49. However, commencement of Schedule 2 and related repeals in Schedule 5 cannot occur unless the requirements of clause 40 are satisfied. Schedule 2 will change sensitive personal information from being a category of information which may not be published unless the court gives permission, to being information which may be published unless the court prohibits or

restricts publication. These provisions also repeal the fourth power (which will not be needed once the approach to this category of information is changed), Schedule 2 also includes changes in the test which is to apply when the court is considering whether to restrict or prohibit the publication of information to reflect the fact that information which is more sensitive will be more frequently in issue.

83. The preconditions for the exercise of this commencement power are stringent, to reflect the fact that the changes made by Schedule 2 are significant. The Lord Chancellor must first allow for a period of 18 months to elapse from commencement of clause 32 (for any purposes, so that if it is commenced in relation to certain kinds of court for limited purposes, for example, that will start the time period running), and can then (and only then) arrange for an independent review of the operation of the reporting regime, and must then set out the conclusions of the review in a report and lay the report before Parliament. Only when all three preconditions have been fulfilled may the Lord Chancellor make the commencement order bringing the Part 2 amending provisions into force. The commencement order itself is subject to the affirmative resolution procedure. The Lord Chancellor does not have to carry out a review or lay a report before Parliament; but may not commence the Part 2 amending provisions without having done so.

84. These reforms are part of a longer journey towards greater transparency, not just within family courts but across government. Much of the sensitive personal information restricted in the initial stage of the reforms (the unamended version of Part 2) is essential for understanding the complexity of family cases and allowing the public to see how and why the courts come to their decisions. The Government believes that the media will be responsible when using this information and that the guarantee of anonymity afforded by the treatment of identification information (which will not change) protects the welfare of children and their families. The Government does, however, also understand the concerns surrounding privacy and will accordingly review the effect of the initial stage of the reforms before proceeding further. The approach adopted in the Bill allows for Parliament to debate, amend if necessary and approve the detail of both the starting point and the final destination by including the latter on the face of the Bill. It is for this reason that it operates by way of a commencement power, not a power to alter the treatment of the information as such: the actual alteration will have been agreed by Parliament on the face of the Bill.

PART 3: MISCELLANEOUS AND FINAL PROVISIONS

Clause 43 - Fees for pre-registration inspections of independent educational institutions

85. This clause amends section 111 of the Education and Skills Act 2008 (“the ESA 2008”). The amendment provides power for the Secretary of State to make regulations to require the **payment of a fee in relation to an inspection of an independent educational institution** that has applied to be registered under section 98 of the Act. Such inspections are carried out under section 99 of the ESA 2008.
86. The aim of this power is to limit the burden of inspections of independent educational institutions on the public purse, and to encourage institutions to meet the required standards at the earliest opportunity so that they avoid incurring the cost of follow-up inspections. The amount of the fee payable will be prescribed in secondary legislation so as to allow it to be amended in response to changing costs. It is proposed that the new regulations will require a £500 fee for each inspection connected with the institution’s application to be included on the register.
87. This power relates to operational details and, as such, it is proposed it should be subject to the negative resolution procedure. This is consistent with the procedure for regulations made under existing powers in section 111 of the ESA 2008.

Clause 49 - Commencement

88. Clause 49(5) provides for the Secretary of State to commence much of the Bill by order. No parliamentary procedure applies to these orders which need not be laid. Clause 49(3) permits the Welsh Ministers to commence clause 29 also by statutory instrument not subject to any parliamentary procedure. Clause 49(4) permits the provisions of Part 2 and Part 2 of schedules 4 and 5 to be commenced by order of the Lord Chancellor (though in relation to commencement of Schedule 2 and Part 2 of schedules 4 and 5 so far as relating to schedule 2, this can only be commenced in compliance with clause 40 and by affirmative resolution procedure). Clause 49(6) provides that a commencement order under subsection (3) or (4) may make **incidental, consequential, supplemental, transitional or transitory** provisions or savings, and may also make different provision for different purposes or different areas.. This latter provision will permit pilot schemes in relation to some of the provisions, for example, in relation to parental satisfaction surveys.

Department for Children, Schools and Families
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Annex A

DELEGATED POWERS IN THE SCHOOLS, CHILDREN AND FAMILIES BILL

CLAUSE	TITLE	PROCEDURE	NEW OR RESTATEMENT
PART 1 - CHILDREN AND SCHOOLS			
1(1) and 2(3) and (4)	Issuing and revising pupil and parent guarantees	Affirmative	New
1(9)	Power to amend the ambit of the guarantees	Affirmative	New
2(5)(b)	Commencement dates of guarantees or revisions	None	New
6	Parental Satisfaction Surveys:		
	New section 19J(1), (3) and (7) EA 1996	Negative	New
	New section 19K(3) and (6) EA 1996	Negative	New
	New section 19L(1), (3) and (4) EA 1996	Negative	New
	New section 19M EA 1996	Negative	New
	New section 19N EA 1996	Negative	New
9(4)	Duty on local authorities to ensure the provision of full-time education for all children falling within the scope of section 19(1) EA 1996	Negative	Extension
10	Areas of learning:		
	New subsection 87 (2A)(a) or (b) EA 2002	Negative	New
	New subsection 87(2A)(c)	None	New
	New subsection 83A (4) EA 2002	Negative	New
	New subsection 83A (6) EA 2002	Affirmative	New
11	Personal, Social, Health and Economic Education (PSHE) in maintained schools:		
	New subsection 85B(2) EA 2002 (maintained schools)	Affirmative	New
	New subsection 84(3)(i) EA 2002	Negative	Extension
	New subsection 85(4)(d) EA 2002	Negative	Extension
	New subsection 74(1)(d) EIA 2006	Negative	Extension
12	PSHE in Academies etc: extension of Part 6 EA 2002 relating to PSHE in Academies: new 483B (2)	Negative	Extension

CLAUSE	TITLE	PROCEDURE	NEW OR RESTATEMENT
15	Power of governing bodies to provide community facilities etc. (school spending powers)	Negative	New
19	Power to prescribe additional services that School Improvement Partners are to provide	Negative	New
20 (1)	Provision of information about schools: clarifies existing power to collect information and data in a consistent manner.	Negative	Extension
20 (2)	Provision of information about schools: to obtain and publish information about LA alternative provision.	Negative	New
21 and Schedule 2	Schools eligible for intervention- powers of local authorities:		
	Extension of section 21(2)(g) EIA 2006	Negative	Extension
	Extension of section 26(2) EIA 2006	Negative	Extension
23	Licensing of teachers:		
	New section 4B THEA 1998	Negative	New
	New section 4C THEA 1998	Negative	New
24	Requirement to be licensed: s 134A EA 2002	Negative	New
25	Requirement to be qualified, registered and licensed: Academies	Negative	Extension
26 and Schedule 1	Requirement for Local Authorities to keep a register of all home educated children and monitor those children (inserts new sections 19A to 19I EA 1996)	Negative	New
27	Registration of home educated children (Amending field 5 of Schedule 5 to the Government of Wales Act 2006.)	Negative	New
30	Power for Chief Inspector to inspect Local Safeguarding Children Boards	Negative	New
PART 2 FAMILY PROCEEDINGS			
32	Power to amend definition of “relevant family proceedings”	Affirmative	New
39	Power for rules of court to make provision necessary to deal with appeals concerning publication	Negative	Extension
41(3)(a)	Power to amend definition of “professional witness”	Affirmative	New

CLAUSE	TITLE	PROCEDURE	NEW OR RESTATEMENT
41(3)(b)	Power to amend list of sensitive personal information at Schedule 3	Affirmative	New
Schedule 2	Restriction on commencement of this clause and schedule. Commencement Order to be subject to additional requirements and pre-conditions.	Affirmative	New
PART 3 - MISCELLANEOUS AND FINAL PROVISIONS			
43	Power collect payment of a fee to an inspection of an independent educational institution (section 111 of the Education and Skills Act 2008)	Negative	Extension
49	Commencement (with exception of Schedule 2 and related) Process for Schedule 2 noted separately above.	None	